IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5550 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

D M PANDE

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 5550 of 2002

MR PARESH UPADHYAY for Petitioner No. 1

MR RV DESAI, AGP for Respondent No. 1-2,4-5

MR RC KAKKAD for Respondent No. 3

CORAM : MR.JUSTICE M.S.SHAH

Date of decision: 02/09/2002

ORAL JUDGEMENT

Rule. Mr RV Desai, learned AGP waives service of Rule for respondent Nos. 1,2, 4 and 5. Mr RC Kakkad, learned counsel waives service of Rule for respondent No. 3.

2. In this petition under Article 226 of the Constitution, the petitioner, who retired as a professor of Gujarat Ayurved University on attaining the age of superannuation with effect from 31.12.2001, has prayed for a writ of mandamus to direct the respondents to pay the petitioner retiral dues such as pension, gratuity and commuted pension.

3. Affidavit in reply dated 14.7.2002 has been filed by the Registrar of Gujarat Ayurved University and affidavit dated 20.8.2002 is filed by respondent No. 5-District Assistant Examiner, Local Fund Accounts, Jamnagar to explain the delay in fixation and sanction of pension and other retiral benefits. It is, however, not necessary to go into details given in the said affidavits because at the hearing of this petition, Mr Paresh Upadhyay, learned counsel for the petitioner has produced a photostat copy of the pension payment order dated 14.8.2002, but Mr Upadhyay has requested that since the petitioner was not paid the retiral dues immediately after the retirement, the respondents may be directed to pay not only the amounts of gratuity, arrears of pension and the commuted pension, but also interest thereon as per the decision of the Hon'ble Supreme Court in Vijay L Mehrotra vs. State of U.P., 2000 (2) SLR 686.

4. On the other hand, Mr Desai, learned AGP for respondent Nos. 1,2, 4 and 5 has submitted that since the pension payment order has been issued within eight months from the date of retirement, it cannot be said that there is unreasonable delay on the part of the respondents. Reference is also made to the affidavit filed by respondent No. 5 to explain the difficulties in verification of the pay fixation done in the past.

5. Having heard the learned counsel for the parties, it appears to the Court that there is some delay on the part of the respondents in fixing and sanctioning the retiral dues which are as yet not paid to the petitioner. Hence, it appears to the Court that the interests of justice would be served if this petition is disposed in terms of the following directions :-

(i) The respondents shall pay the petitioner the retiral dues as per the pension payment order dated 14.8.2002 latest by 30.9.2002.

(ii) The respondents shall also pay the petitioner interest at the rate of 9% per annum on the arrears of monthly pension and on the amount of gratuity of Rs.3,50,000/- for the period from

1.3.2002 till the day of payment.

(iii) The amount of interest at the aforesaid rate for the aforesaid period shall be paid to the petitioner by 30.10.2002.

(iv) It is clarified that if the amount of commuted pension is paid to the petitioner within the aforesaid time limit of 30.9.2002, no interest shall be payable on the amount of commuted pension which is stated to be Rs.5,25,503/- in the aforesaid pension payment order dated 14.8.2002.

It is directed accordingly.

6. The petition stands disposed of accordingly. Rule is made absolute to the aforesaid extent with no order as to costs.

Direct Service is permitted.

(M.S. Shah, J.)

sundar/-